

Exhibit S



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Transcript of David Wise

Date: January 31, 2025

Case: Headwater Research LLC -v- AT&T Services, Inc., et al.

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Transcript of David Wise
Conducted on January 31, 2025

1 (1 to 4)

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE EASTERN DISTRICT OF TEXAS 3 MARSHALL DIVISION</p> <p>4 HEADWATER RESEARCH LLC,) 5 Plaintiff,) CASE NO.: 6 VS.) 2:23-cv-00397-JRG-RSP 7 AT&T SERVICES, INC.,) Lead Case 8 AT&T MOBILITY, LLC, AND) 9 AT&T CORP.,) 10 Defendants.)</p> <p>11 HEADWATER RESEARCH LLC,) 12 Plaintiff,) CASE NO.: 13 VS.) 2:23-cv-00398-JRG-RSP 14 AT&T SERVICES, INC.,) 15 AT&T MOBILITY, LLC, AND) 16 AT&T CORP.,) 17 Defendants.)</p> <p>18 ----- 19 ORAL, REALTIMED, VIDEO TAPE DEPOSITION OF 20 DAVID WISE 21 JANUARY 31, 2025 22 JOB NO.: 570073 23 PAGES: 1 - 77 24 REPORTED BY: ANNETTE PELTIER 25</p>	<p>1 A P P E A R A N C E S 2 (ALL APPEARING VIA ZOOM VIDEOCONFERENCE)</p> <p>3 ON BEHALF OF THE PLAINTIFFS: 4 KRIS DAVIS, ESQUIRE 5 Russ, August & Kabat, LLP 6 8080 N. Central Expressway 7 Dallas, Texas 75206 310.826.7474</p> <p>8 ON BEHALF OF THE DEFENDANTS: 9 SCOTT HEJNY, ESQUIRE 10 McKool Smith 11 303 Colorado Street 12 Suite 2100 13 Austin, Texas 78701 512.692.8700</p> <p>14 ON BEHALF OF THE WITNESS: 15 DAVID KAYS, ESQUIRE 16 Morgan, Franich, Fredkin Siamas & 17 Kays LLP 18 333 W. San Carlos Street 19 San Jose, CA 95110 408.288.8288</p> <p>20 ALSO PRESENT: 21 Lawrence Wallace, Videographer Charlie McGrath, Video Tech</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>1 ORAL, REALTIMED, VIDEO TAPE DEPOSITION OF 2 DAVID WISE, produced as a witness at the instance 3 of the Defendants, and duly sworn, was taken in 4 the above-styled and numbered cause on 5 January 31, 2025, from 12:03 p.m. to 1:54 p.m., 6 before Annette Peltier, CSR, Texas Certified 7 Realtime Reporter, in and for the State of Texas, 8 reported by machine shorthand pursuant to the 9 Federal Rules of Civil Procedure and the 10 provisions stated on the record or attached 11 hereto.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>2</p> <p>1 Index Page</p> <p>2 Appearances..... 3</p> <p>3 Examination by Mr. Hejny..... 8</p> <p>4 Examination by Mr. Davis..... 71</p> <p>5 Adjournment..... 73</p> <p>6 Signature Page..... 74</p> <p>7 Court Reporter's Certificate..... 75</p> <p>8 Exhibits</p> <p>9 Number Description Page</p> <p>10 Exhibit 1 Deposition Notice..... 11</p> <p>11 Exhibit 2 David Wise LinkedIn..... 13</p> <p>12 Exhibit 3 Raleigh Invention Disclosure, 13 Confidentiality & Proprietary 14 Rights Agreement (HW397-00094026-31)..... 20</p> <p>15 Exhibit 4 January 2009 Raleigh and Paul 16 Jacobs E-Mails (HW397-00102740-41)..... 24</p> <p>17 Exhibit 5 2009.01.22 QC-HW Partners NDA (HW397-00102740-41)..... 29</p> <p>18 Exhibit 6 3.4.2009 E-Mail (HW397-00051416)..... 34</p> <p>19 Exhibit 7 2.25.2009 ItsOn PowerPoint 20 To QC on Best Buy E2E (HW397-00018717-31)..... 40</p> <p>21 Exhibit 8 2009.04.21 re: ItsOn (HW397-00051418-20)..... 44</p> <p>22 Exhibit 9 2009.05.06 Patent Application (HW397-00051421)..... 53</p> <p>23 Exhibit 10 2009.05.07 Moving Forward (HW397-00051422)..... 56</p>

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5

1 Services, Inc., et al, in the United States
2 District Court for the Eastern District of Texas,
3 Marshall Division, Case Number
4 2:23-cv-397-JRG-RSP.
5 Today's date is January 31st,
6 2025. The time on the video monitor is
7 2:04 [sic] p.m. Central time.
8 The remote videographer today is
9 Lawrence Wallace, representing Planet Depos.
10 All parties of this video
11 deposition are attending remotely.
12 Would counsel please
13 voice-identify themselves and state whom they
14 represent.
15 MR. HEJNY: Scott Hejny from
16 McKool Smith on behalf of AT&T.
17 MR. DAVIS: Kris Davis from Russ,
18 August & Kabat on behalf of Headwater Research,
19 LLC.
20 MR. KAYS: David Kays on behalf of
21 the witness, David Wise.
22 THE VIDEOGRAPHER: All right. The
23 court reporter today is Annette Peltier,
24 representing Planet Depos.
25 The witness will now be sworn.

7

1 EXHIBIT TECH: Thank you to
2 everyone for attending this proceeding remotely,
3 which we anticipate will run smoothly.
4 Please remember to speak slowly
5 and do your best not to talk over one another.
6 Please be aware that we are
7 recording this proceeding for backup purposes.
8 Any off-the-record discussions
9 should be had away from the computer.
10 Please remember to mute your mic
11 for those conversations.
12 Please have your video enabled to
13 help the reporter identify who is speaking. If
14 you are unable to connect with video and are
15 connecting via phone, please identify yourself
16 each time before speaking.
17 I apologize in advance for any
18 technical-related interruptions.
19 Thank you.
20 THE VIDEOGRAPHER: All right.
21 Everyone please stand by to be read onto the
22 video record.
23 Here begins media number one in
24 the videotaped deposition of David Wise in the
25 matter of Headwater Research, LLC, versus AT&T

6

1 DAVID WISE,
2 Having been first duly sworn, testified upon his
3 oath as follows:
4 EXAMINATION
5 BY MR. HEJNY:
6 Q. Good morning, Mr. Wise.
7 A. Good morning.
8 Q. So you -- you mentioned before we started
9 that you'd been deposed before, correct?
10 A. Yes.
11 Q. Okay. So I'll walk through some
12 guidelines here in a minute, but obviously this
13 is your first remote depo.
14 Are you alone in the room where you're
15 being deposed now?
16 A. Yes.
17 Q. Do you have any documents in front of you
18 or pulled up on your computer screen?
19 A. No.
20 Q. Great.
21 How many times have you been deposed
22 before?
23 A. Three.
24 Q. When was the last time you were deposed --
25 I guess the most recent deposition?

8

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9 (33 to 36)

	33	35
1 years ago, so I don't, sorry.		1 the Bates number on this document is
2 Q. Understood.		2 HW397-0051416.
3 Do you recall any conversations		3 Q. (BY MR. HEJNY) And just for your
4 with -- with Dr. Raleigh or Headwater following		4 edification, mimoguy@mac.com, that e-mail address
5 the entry of this nondisclosure agreement		5 is the e-mail address for Greg Raleigh. Okay?
6 regarding the potential partnership between		6 A. Okay.
7 Headwater and Qualcomm?		7 Q. Who was Gina Lombardi?
8 A. No.		8 A. She was a senior executive at the company,
9 Q. Do you recall any meetings with Headwater		9 at Qualcomm, at the time.
10 or Dr. Raleigh?		10 Q. And what was her role at the company?
11 A. I don't recall any, no.		11 A. I honestly don't recall.
12 Q. Do you recall any discussions as to		12 Q. Do you recall why you and Ms. Lombardi
13 whether Dr. Raleigh had filed or intended to file		13 were teamed to work on this discussion with
14 a patent application in January 2009 that would		14 Dr. Raleigh and Jim Straight?
15 impact the relationship between Headwater and		15 A. Yeah. Let me just read this real quick.
16 Qualcomm?		16 Q. Yeah, please. Any -- and just for the
17 MR. KAYS: And just point of		17 record, Mr. Wise, any time I put a document in
18 clarification, Counsel, your -- discussions with		18 front of you, you know, take your time and read
19 Mr. Raleigh? Is that -- is that the intent of		19 through it; and I should have instructed you on
20 the question?		20 that earlier. So please take a look, read
21 MR. HEJNY: Yes. Do you recall		21 through the e-mail, and then we can ask
22 any --		22 questions.
23 MR. KAYS: Okay.		23 A. Okay. I'm sorry, can you repeat the
24 MR. HEJNY: I'll restate the		24 question?
25 question.		25 Q. Sure. Let me step back and ask you a
	34	36
1 MR. KAYS: Thank you.		1 different question.
2 Q. (BY MR. HEJNY) Do you recall any		2 The subject says, "ItsOn Next Steps."
3 conversations with Headwater or Dr. Raleigh		3 Are you familiar with an entity or a
4 regarding the filing of a patent application in		4 company called "ItsOn"?
5 January of 2009 that may have had some bearing on		5 A. I recall the name, yes.
6 the relationship between Headwater, Dr. Raleigh,		6 Q. Were you aware that Dr. Raleigh formed
7 and Qualcomm?		7 ItsOn before he left Qualcomm in September
8 A. I don't recall.		8 of 2008?
9 Q. Do you recall a potential intellectual		9 A. No.
10 property ownership dispute between Dr. Raleigh		10 Q. Are you -- were you aware that ItsOn was a
11 and Qualcomm?		11 company that was owned by Dr. Raleigh?
12 A. No.		12 A. Yes.
13 Q. Do you know anything at all about patent		13 Q. And my first question was, do you recall
14 applications that were filed by Dr. Raleigh?		14 why you and Ms. Lombardi were teamed together to
15 A. No.		15 work on this discussion with Dr. Raleigh and
16 Q. Okay. Let's move on to Exhibit 6, please.		16 Mr. Straight?
17 (Whereupon Exhibit Number 6 was		17 A. Only that I assume it's -- based on this
18 marked for identification.)		18 e-mail, it's a follow-up to the -- you know,
19 Q. (BY MR. HEJNY) Okay. Exhibit 6 is a		19 evaluating whether there was anything to be --
20 March 4, 2009, e-mail from Gina Lombardi to Greg		20 (garbled audio).
21 Raleigh and Jim Straight and you are copied in		21 THE COURT REPORTER: I'm sorry,
22 that e-mail.		22 sir. Anything to be what?
23 Do you see that, Mr. Wise?		23 THE WITNESS: Anything to be done
24 A. Yes.		24 evaluating a partnership with the company, with
25 MR. HEJNY: And for the record,		25 ItsOn.

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12 (45 to 48)

	45	
1	last page. There.	1 commercialization of ItsOn software on Qualcomm
2	Okay. So this is an April 21st, 2009,	2 chips?
3	e-mail from Gina Lombardi to Jim Straight and	3 A. Yes.
4	Greg Raleigh, and you see that you're -- you are	4 Q. And the last item in that list is
5	copied on this e-mail, as well, correct?	5 "resolution of IP ownership issue."
6	A. Yes. Let me -- let me just read it.	6 Do you see that?
7	Q. Yeah, sure.	7 A. Yes.
8	A. Okay.	8 Q. And I asked you before if you recalled a
9	Q. Okay. Can you see that the -- the e-mail,	9 dispute between Dr. Raleigh and Qualcomm
10	which is -- has the subject of "ItsOn," in the	10 regarding an IP ownership issue.
11	body of the e-mail, there's something called a	11 Does this refresh your recollection?
12	"Seed Investment."	12 A. No.
13	Do you see that?	13 Q. So as you sit here today, you have no
14	A. Yes.	14 recollection whatsoever of the ownership interest
15	Q. And was this an offer by Qualcomm to	15 dispute between Dr. Raleigh and Qualcomm?
16	invest in ItsOn?	16 A. Honestly, I don't.
17	A. Looks to be, yes.	17 MR. HEJNY: Let's move up to the
18	Q. Do you recall this e-mail or this	18 next e-mail in the chain, please.
19	potential investment by Qualcomm in ItsOn?	19 Q. (BY MR. HEJNY) And this e-mail begins at
20	A. Beyond the e-mail, no.	20 the bottom of Bates 418.
21	Q. But in the e-mail, it looks like Qualcomm	21 And so this is an e-mail from Jim
22	was willing to invest \$2 million plus a license	22 Straight, who is at Headwater, to Gina Lombardi
23	to the relevant Qualcomm IP for a 20 percent	23 and Greg Raleigh and you are copied.
24	stake.	24 Do you see that?
25	Do you see that?	25 A. Yes.
	46	
1	A. Yes.	1 Q. And it looks like in this portion of -- of
2	Q. And presumably that's a 20 percent stake	2 the process, there is a due diligence going on.
3	in ItsOn, correct?	3 Do you see that?
4	A. I believe so.	4 A. Can I just read the e-mail?
5	Q. And what is a "1X liquidation preference"?	5 Q. Yeah, please. Please take your time and
6	A. It's a -- a term associated with an	6 read the e-mail.
7	investment in a private company.	7 THE WITNESS: And can you just
8	Q. And can you explain it to me, how it would	8 scroll up a little bit on it, so we can... yeah,
9	relate to this potential agreement with ItsOn?	9 that's good. Thanks.
10	A. It would be some sort of protection over	10 Okay. Can you scroll back up a
11	the two-million-dollar investment in a	11 little bit now? Okay.
12	liquidation.	12 Q. (BY MR. HEJNY) So in this e-mail,
13	Q. And what is a "full ratchet	13 Mr. Straight from Headwater identifies
14	anti-dilution"?	14 diligence -- a diligence items action list.
15	A. Another term in venture investments,	15 Do you see that?
16	private companies, around protecting the value of	16 A. Yes.
17	our investment going forward as new money comes	17 Q. And do you recall any meetings with
18	in.	18 Headwater or Dr. Raleigh in which the seed
19	Q. So it would protect Qualcomm's 20 percent	19 investment from the first e-mail was discussed in
20	stake?	20 detail?
21	A. Right.	21 A. I don't.
22	Q. And prevent it from being diluted?	22 Q. And item (1) on the diligence items action
23	A. Yes.	23 list states that, "This week Qualcomm will
24	Q. And it looks like in this seed investment,	24 transmit to ItsOn/HPI the potential prior art
25	Qualcomm would be committing to support	25 search results that Qualcomm believes to be

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13 (49 to 52)

	49		51
1	relevant."	1	question potentially invades the attorney/client
2	You see that?	2	privilege, so...
3	A. Yes.	3	A. I don't recall anything.
4	Q. Do you know what "prior art" is, Mr. Wise?	4	Q. (BY MR. HEJNY) Do you recall when
5	A. Not [sic] familiar with the term.	5	Qualcomm first informed Dr. Raleigh that it
6	Q. So you don't understand the term "prior	6	believed it owned some portion of ItsOn's IP?
7	art" from a -- from a patent or an IP standpoint?	7	A. No.
8	A. No. I said I'm familiar with the term.	8	Q. Do you understand that Qualcomm
9	Q. Oh, I'm sorry. I misunderstood you.	9	consistently maintained that it had an ownership
10	Do you know whether Qualcomm ever sent	10	interest in ItsOn's IP?
11	ItsOn or Headwaters the results of any prior art	11	MR. DAVIS: Objection, form.
12	search that was conducted as part of this	12	A. I don't recall beyond what we're seeing in
13	process?	13	some of these e-mails.
14	A. Not beyond what we -- what's said here in	14	Q. (BY MR. HEJNY) Do you recall any
15	the e-mail.	15	discussions internally at Qualcomm as to when
16	MR. HEJNY: And let's scroll down	16	Dr. Raleigh first invented the IP in question?
17	to item (4). Maybe scroll up to item four,	17	A. No.
18	sorry. It's on the next page.	18	Q. And going to the very first e-mail on the
19	Q. (BY MR. HEJNY) Item (4) says, the "Next	19	first page --
20	week, Qualcomm and ItsOn/HPI will have a	20	A. Can you hang on one second?
21	face-to-face meeting same day or next morning	21	Q. Yes, please. Take your time.
22	immediately after meetings listed in diligence	22	A. I'm sorry, can you repeat the question?
23	items (2) and (3) for Qualcomm to disclose to	23	MR. HEJNY: Can you read back the
24	ItsOn/HPI the facts, documents, and any other	24	question, please?
25	information that Qualcomm possesses that Qualcomm	25	(Discussion with the court
	50		52
1	believes support the Qualcomm claim that it may	1	reporter, clarifying read-back.)
2	own some" or -- "some portion of ItsOn's IP."	2	MR. KAYS: I don't think you'd
3	Do you see that?	3	asked a question.
4	A. Yes.	4	THE COURT REPORTER: Right.
5	Q. Do you recall discussions with Dr. Raleigh	5	MR. HEJNY: Let's just go back --
6	or Ms. Lombardi regarding this ownership issue,	6	I just want to make sure.
7	Mr. Wise?	7	THE WITNESS: Okay.
8	A. I don't.	8	MR. HEJNY: Let's go back to --
9	Q. Do you recall the facts, documents, and	9	THE WITNESS: I'm sorry about
10	any other information that Qualcomm possessed	10	10 that.
11	suggesting that it may own some portion of	11	MR. HEJNY: I just want to make
12	ItsOn's IP?	12	12 sure that I didn't leave something hanging.
13	A. I don't recall, beyond this e-mail.	13	(Whereupon the requested testimony
14	Q. Do you know if this meeting ever took	14	was read back as follows:
15	place, this face-to-face meeting?	15	"Do you recall any discussions
16	A. I don't know. No reason to assume it	16	internally at Qualcomm as to when
17	didn't, but I don't know.	17	Dr. Raleigh first invented the IP
18	Q. Do you recall, regardless of whether this	18	in question?
19	meeting took place, any -- any other evidence or	19	A. No.")
20	information that Qualcomm had that led it to	20	Q. (BY MR. HEJNY) And going to the very
21	believe that it owned some portion of ItsOn's IP?	21	first e-mail on the first page of this string...
22	MR. KAYS: Again, I'll advise the	22	MR. HEJNY: Can you scroll up just
23	witness that to the extent such evidence or	23	a little bit? There we go.
24	knowledge was communicated to Headwater, that's	24	Q. (BY MR. HEJNY) And so this is the first
25	fair game, but as -- as framed, it -- the	25	e-mail in the string, April 24th, 2009, from Gina